

PART 744

CONTROL POLICY: END-USER AND END-USE BASED

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§744.1**GENERAL PROVISIONS**

(a)(1) Introduction. In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Five (End-use/End-users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, 744.4 and 744.5 prohibit exports and reexports of items subject to the EAR to defined nuclear, missile, chemical and biological activities and nuclear maritime end-uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses regardless of whether that support involves the export or reexport of items subject to the EAR. Sections 744.7 and 744.8 prohibit exports and reexports of certain items for certain aircraft and vessels. Section 744.9 prohibits U.S. persons from providing technical assistance to certain foreign persons seeking to develop or manufacture certain encryption commodities or software. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in Supplement No. 4 of this part. Sections 744.12, 744.13 and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.15 describes restrictions on exports and reexports to persons named in general orders. Section 744.16 prohibits exports and reexports by U.S. persons of items subject to the EAR to persons designated pursuant to Executive Order 13088, as amended by Executive Order 13192, including Slobodan Milosevic, his close associates, and persons determined to be under open indictment by the International Criminal Tribunal for the former Yugoslavia. In addition, these sections include

license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain in-country transfers of items subject to the EAR to denied parties.

(2) If controls set forth under more than one section of part 744 apply to a person, the license requirements for such a person will be determined based on the requirements of all applicable sections of part 744, and license applications will be reviewed under all applicable licensing policies.

(b) Steps

The following are steps you should follow in using the provisions of this part:

(1) Review end-use and end-user prohibitions. First, review each end-use and end-user prohibition described in this part to learn the scope of these prohibitions.

(2) Determine applicability. Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, or other activity. See Supplement No. 1 to part 732 for guidance.

● **(c)** A list of entities is included in Supplement No. 4 to this part 744 of the EAR (Entity List). The public is hereby informed that these entities are ineligible to receive any items subject to the EAR without a license to the extent specified in the supplement. License applications will be reviewed under the license review standards set forth in this part 744. No License Exceptions are available for exports or reexports to listed entities of specified items, except License Exceptions for items listed in §740.2(a)(5) of the EAR destined to listed Indian or Pakistani entities intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

§744.2

**RESTRICTIONS ON CERTAIN NUCLEAR
END-USES*****(a) General prohibition***

In addition to the license requirements for items specified on the CCL, you may not export or reexport to any destination, other than countries in the Supplement No. 3 to this part, any item subject to the EAR without a license if at the time of the export or reexport you know¹ the item will be used directly or indirectly in any one or more of the following activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(1) Nuclear explosive activities. Nuclear explosive activities, including research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, or components or subsystems of such a device.^{2 3}

¹ Part 772 of the EAR defines "knowledge" for all of the EAR except part 760, Restrictive Trade Practices and Boycotts. The definition, which includes variants such as "know" and "reason to know", encompasses more than positive knowledge. Thus, the use of "know" in this section in place of the former wording "know or have reason to know" does not lessen or otherwise change the responsibilities of persons subject to the EAR.

² Nuclear explosive devices and any article, material, equipment, or device specifically designed or specially modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, items specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal

(2) Unsafeguarded nuclear activities.

Activities including research on, or development, design, manufacture, construction, operation, or maintenance of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation when it contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export), or where any such obligation is not met.

(3) Safeguarded and unsafeguarded nuclear activities.

Safeguarded and unsafeguarded nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation or maintenance of any of the following facilities, or components for such facilities:⁴

(i) Facilities for the chemical processing of irradiated special nuclear or source material;

(ii) Facilities for the production of heavy water;

(iii) Facilities for the separation of isotopes of source and special nuclear material; or

commercial use for other purposes) are subject to the same requirements.

³ Also see §§744.5 and 748.4 of the EAR for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

⁴ Such activities may also require a specific authorization from the Secretary of Energy pursuant to §57.b.(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR 810.

(iv) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(b) Additional prohibition on exporters or reexporters informed by BIS

BIS may inform an exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of specified items to specified end-users, because BIS has determined that there is an unacceptable risk of use in, or diversion to, any of the activities described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter or reexporter from compliance with the license requirements of paragraph (a) of this section.

(c) Exceptions

Despite the prohibitions described in paragraph (a) and (b) of this section, you may export technology subject to the EAR under the *operation technology and software* or *sales technology and software* provisions of License Exception TSU (see §740.13(a) and (b)), but *only* to and for use in countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)). Notwithstanding the provisions of part 740 of the EAR, the provisions of §740.13(a) and (b) will only overcome General Prohibition Five for countries listed in Supplement No. 3 to part 744 of the EAR.

(d) License review standards

The following factors are among those used by the United States to determine whether to grant or

deny license applications required under this section:

(1) Whether the commodities, software, or technology to be transferred are appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;

(2) The significance for nuclear purposes of the particular commodity, software, or technology;

(3) Whether the commodities, software, or technology to be exported are to be used in research on or for the development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;

(4) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(5) Whether the end-user has been engaged in clandestine or illegal procurement activities;

(6) Whether an application for a license to export to the end-user has previously been denied, or whether the end-use has previously diverted items received under a license, License Exception, or NLR to unauthorized activities;

(7) Whether the export would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in §744.2 of this part; and

(8) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(i) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) (see Supplement No. 2 to part 742 of the EAR),

or to a similar international legally-binding nuclear nonproliferation agreement;

(ii) Whether the importing country has all of its nuclear activities, facilities or installations that are operational, being designed, or under construction, under International Atomic Energy Agency (IAEA) safeguards or equivalent full scope safeguards;

(iii) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(iv) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of nonproliferation;

(v) The degree to which the government of the importing country cooperates in nonproliferation policy generally (e.g., willingness to consult on international nonproliferation issues);

(vi) Intelligence data on the importing country's nuclear intentions and activities.

§744.3

RESTRICTIONS ON CERTAIN MISSILE END-USES

(a) General prohibition

In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if at the time of the export or reexport you know the item:

(1) Is destined to or for a project listed in the footnote to Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(2) Will be used in the design, development, production or use of missiles in or by a country listed in Country Group D:4, whether or not that use involves a listed project.

(b) Additional prohibition on exporters informed by BIS

BIS may inform the exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export or reexport, or for exports or reexports of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to activities described in paragraph (a) of this section, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section. An illustrative list of projects is included in a footnote to Country Group D:4. Exporters and reexporters are deemed to have been informed that an individual license is required to export or reexport to these projects. Exporters should be aware that the list of projects in Country Group D:4 is not comprehensive; extra caution should be exercised when making any shipments to a country listed in Country Group D:4.

(c) Exceptions

No License Exceptions apply to the prohibitions described in paragraph (a) and (b) of this section.

(d) License review standards for certain missile end-uses

(1) Applications to export the items subject to this section will be considered on a case-by-case

basis to determine whether the export would make a material contribution to the proliferation of missiles. When an export is deemed to make a material contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required by this section:

- (i) The specific nature of the end-use;
- (ii) The significance of the export in terms of its contribution to the design, development, production, or use of missiles;
- (iii) The capabilities and objectives of the missile and space programs of the recipient country;
- (iv) The non-proliferation credentials of the importing country;
- (v) The types of assurances or guarantees against design, development, production or use for missiles delivery purposes that are given in a particular case; and
- (vi) The existence of a pre-existing contract.

§744.4

RESTRICTIONS ON CERTAIN CHEMICAL AND BIOLOGICAL WEAPONS END-USES

(a) General prohibition

In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if at the time of the export or reexport you know the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country

listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(b) Additional prohibition on exporters informed by BIS

BIS may inform the exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export or reexport, or for export or reexport of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) Exceptions

No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(d) License review standards

(1) Applications to export or reexport items subject to this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required under this section:

- (i) The specific nature of the end-use;
- (ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;
- (iii) The nonproliferation credentials of the importing country;
- (iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and
- (v) The existence of a pre-existing contract.⁵

§744.5

RESTRICTIONS ON CERTAIN MARITIME NUCLEAR PROPULSION END-USES

(a) General prohibition

In addition to the license requirements for items specified on the CCL, you may not export or reexport certain technology subject to the EAR without a license if at the time of the export or reexport you know the item is for use in connection with a foreign maritime nuclear propulsion project. This prohibition applies to any technology relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, devices, components, or equipment specifically developed or designed for use in such plants or facilities.

(b) Exceptions

The exceptions provided in part 740 of the EAR

⁵ See Supplement No. 1 to part 742 of the EAR for relevant contract sanctity dates.

do not apply to the prohibitions described in paragraph (a) of this section.

(c) License review standards

It is the policy of the United States Government not to participate in and not to authorize United States firms or individuals to participate in foreign naval nuclear propulsion plant projects, except under an Agreement for Cooperation on naval nuclear propulsion executed in accordance with §123(d) of the Atomic Energy Act of 1954. However, it is the policy of the United States Government to encourage United States firms and individuals to participate in maritime (civil) nuclear propulsion plant projects in friendly foreign countries provided that United States naval nuclear propulsion information is not disclosed.

§744.6

RESTRICTIONS ON CERTAIN ACTIVITIES OF U.S. PERSONS

(a) General prohibitions

(1) Activities related to exports

(i) No U.S. person as defined in paragraph (c) of this section may, without a license from BIS, export, reexport, or transfer to or in any country any item where that person knows that such items:

(A) Will be used in the design, development, production, or use of nuclear explosive devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to part 740 of the EAR).

(B) Will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(ii) No U.S. person shall, without a license from BIS, knowingly support an export, reexport, or transfer that does not have a license as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

(2) Other activities unrelated to exports. No U.S. person shall, without a license from BIS:

(i) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(ii) Perform any contract, service, or employment that the U.S. person knows directly will directly assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(3) Whole plant requirement. No U.S. person shall, without a license from BIS, participate in the design, construction, export, or reexport of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of the EAR).

(b) Additional prohibitions on U.S. persons informed by BIS

BIS may inform U.S. persons, either individually

or through amendment to the EAR, that a license is required because an activity could involve the types of participation and support described in paragraph (a) of this section anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) Definition of U.S. person

For purposes of this section, the term U.S. person includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

(3) Any person in the United States.

(d) Exceptions

No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(e) License review standards

Applications to engage in activities otherwise prohibited by this section will be denied if the activities would make a material contribution to the design, development, production, stockpiling, or use of nuclear explosive devices, chemical or biological weapons, or of missiles.

§744.7**RESTRICTIONS ON CERTAIN EXPORTS
TO AND FOR THE USE OF CERTAIN
FOREIGN VESSELS OR AIRCRAFT*****(a) General end-use prohibition***

In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR to, or for the use of, a foreign vessel or aircraft, whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a License Exception or NLR permits the shipment to be made:

- (1) To the country in which the vessel or aircraft is located, and
- (2) To the country in which the vessel or aircraft is registered, or will be registered in the case of a vessel or aircraft under construction, and
- (3) To the country, including a national thereof, which is currently controlling, leasing, or chartering the vessel or aircraft.

(b) Exception for U.S. and Canadian carriers

(1) Notwithstanding the general end-use prohibition in paragraph (a) of this section, export and reexport may be made of the commodities described in paragraph (b)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are⁶ all of the following:

- (i) Ordered by the person in command or the

⁶ Where a license is required, see §§748.2 and 748.4(g) of the EAR.

owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need, except that usual and reasonable quantities of ship's bunkers or aviation fuel are considered to be only that quantity necessary for a single onward voyage or flight; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use.

(2) Exports to U.S. or Canadian Airline's Installation or Agent. Exports and reexports of the commodities described in paragraph (e) of this section, except fuel, may be made to a U. S. or Canadian airline's installation or agent in any foreign destination except Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) Applicable commodities. This §744.7 applies to the commodities listed subject to the provisions in paragraph (b) of this section:

(i) Fuel, except crude petroleum and blends of unrefined crude petroleum with petroleum products, which is of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, except crude petroleum, provided that any commodities which are listed in Supplement No. 2 to part 754 of the EAR are of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles;

(vi) Saloon stores or supplies; and

(vii) Equipment and spare parts.

§744.8

[RESERVED]

§744.9

RESTRICTIONS ON TECHNICAL ASSISTANCE BY U.S. PERSONS WITH RESPECT TO ENCRYPTION ITEMS

(a) General prohibition

No U.S. person may, without authorization from BIS, provide technical assistance (including training) to foreign persons with the intent to aid a foreign person in the development or manufacture outside the United States of encryption commodities and software that, if of United States origin, would be controlled for EI reasons under ECCN 5A002 or 5D002. Technical assistance may be exported immediately to nationals of the countries listed in Supplement 3 to part 740 of the EAR (except for technical assistance to government end-users for cryptanalytic items) provided the exporter has submitted to BIS a completed classification request by the time of export. Note that this prohibition does not apply if the U.S. person providing the assistance has a license or is otherwise entitled to export the encryption commodities and software in question to the foreign person(s) receiving the assistance. Note in addition that the mere teaching or discussion of information about cryptography, including, for example, in an academic setting or in the work of groups or bodies engaged in standards development, by itself would not establish the intent described in this section, even where foreign persons are present.

(b) Definition of U.S. person

For purposes of this section, the term U.S. person includes:

(1) Any individual who is a citizen or permanent resident alien of the United States;

(2) Any juridical person organized under the laws of the United States or any jurisdiction

within the United States, including foreign branches; and

(3) Any person in the United States.

(c) License review standards

Applications involving activities described in this section will be reviewed on a case-by-case basis to determine whether the activity is consistent with U.S. national security and foreign policy interests.

§744.10

**RESTRICTIONS ON CERTAIN ENTITIES
IN RUSSIA**

(a) General prohibition

Certain entities in Russia are included in Supplement No. 4 to this part 744 (Entity List). (See also §744.1(c) of the EAR.) Exporters are hereby informed that these entities are ineligible to receive any items subject to the EAR without a license.

(b) Exceptions

No License Exceptions apply to the prohibition described in paragraph (a) of this section.

(c) License review standards

Applications to export or reexport items subject to the EAR to these entities will be reviewed with a presumption of denial.

§744.11

[RESERVED]

§744.12

**RESTRICTIONS ON EXPORTS AND
REEXPORTS TO PERSONS DESIGNATED
IN OR PURSUANT TO EXECUTIVE
ORDER 13224 (SPECIALLY DESIGNATED
GLOBAL TERRORIST) (SDGT)**

BIS maintains restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism). These persons include individuals and entities listed in the Annex to Executive Order 13224, as well as persons subsequently designated by the Secretary of State or Secretary of the Treasury pursuant to criteria set forth in the order. Pursuant to Executive Order 13224, the Department of the Treasury's Office of Foreign Assets Control (OFAC) maintains 31 CFR part 594, the Global Terrorism Sanctions Regulations. OFAC announces the names of persons designated pursuant to Executive Order 13224 in the Federal Register and includes such persons in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. The Department of State also announces the names of foreign persons designated pursuant to Executive Order 13224 in the Federal Register. All persons designated in or pursuant to Executive Order 13224 are identified in Appendix A to 31 CFR Chapter V by the bracketed initials [SDGT] and are also known as Specially Designated Global Terrorists (SDGTs).

(a) License requirement(s)

(1) A license requirement applies to the export or reexport to an SDGT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDGT of an item subject

to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224. Therefore, if OFAC authorizes an export from the United States or an export or reexport by a U.S. person to an SDGT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDGT of any item subject to the EAR that is not subject to OFAC's Global Terrorism Sanctions Regulations in 31 CFR part 594.

(4) Non-U.S. persons must seek authorization from BIS for any export from abroad or reexport to an SDGT of any item subject to the EAR.

(5) Any export or reexport to an SDGT of any item subject to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDGT of any item subject to the EAR that is not subject to regulation by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDGT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorization are available for any export or reexport to an SDGT of any item subject to the EAR.

(c) Licensing Policy

Applications for licenses for the export or reexport to an SDGT of any item subject to the EAR generally will be denied. You should

consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) Contract Sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

NOTE to §744.12: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

§744.13

**RESTRICTIONS ON EXPORTS AND
REEXPORTS TO PERSONS DESIGNATED
PURSUANT TO EXECUTIVE ORDER
12947 (SPECIALLY DESIGNATED
TERRORISTS) (SDT)**

Consistent with the purpose of Executive Order 12947 of January 23, 1995, BIS maintains restrictions on exports and reexports to Specially Designated Terrorists (SDTs). Executive Order 12947 prohibits transactions by U.S. persons with terrorists who threaten to disrupt the Middle East peace process. Pursuant to the Executive Order, the Department of the Treasury, Office of Foreign Assets Control (OFAC), maintains 31 CFR part 595, the Terrorism Sanctions Regulations. In Appendix A to 31 CFR Chapter V, pursuant to 31 CFR part 595, these Specially Designated Terrorists are identified by the bracketed suffix initials [SDT]. The requirements set forth below further the objectives of Executive Order 12947.

(a) License requirement(s)

(1) A license requirement applies to the export or reexport to an SDT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDT of an item subject both to the EAR and to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595. Therefore, if OFAC authorizes an export or reexport of an item by a U.S. person to a SDT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDT of an item subject to the EAR but not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an SDT of any item subject to the EAR.

(5) Any export or reexport to an SDT by a U.S. person of any item subject both to the EAR and OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDT of any item subject to the EAR that is not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorization are available for export or reexport to an SDT of any item subject to the EAR.

(c) Licensing policy

Applications for licenses for the export or reexport to an SDT of any item subject to the EAR generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) Contract sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

NOTE to §744.13: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

§744.14

RESTRICTIONS ON EXPORTS AND REEXPORTS TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS (FTOs)

Consistent with the objectives of section 219 of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1189), and section 303 of the Antiterrorism and Effective Death Penalty Act 1996, as amended (Anti-Terrorism Act) (18 U.S.C. 2339B) (Public Law 104-132, 110 Stat. 1214-1319), BIS maintains restrictions on exports and reexports to organizations designated as Foreign Terrorist Organizations (FTOs) pursuant to section 219 of the INA. The Department of the Treasury, Office of Foreign Assets Control, maintains 31 CFR part 597, the Foreign Terrorist Organizations Sanctions Regulations, requiring U.S. financial institutions to block all financial transactions involving assets of designated FTOs within the possession or control of such U.S. financial institutions. Section 303 of the Anti-Terrorism Act prohibits persons within the United

States or subject to U.S. jurisdiction from knowingly providing material support or resources to a designated FTO and makes violations punishable by criminal penalties under title 18, United States Code. These designated FTOs are listed in Appendix A to 31 CFR Chapter V and identified by the bracketed initials [FTO]. A designation of a foreign organization determined to meet the criteria of section 219 of the INA takes effect upon publication in the Federal Register by the Secretary of State, or the Secretary's designee.

(a) License requirement(s)

(1) A license requirement applies to the export or reexport to an FTO of any item subject to the EAR.

(2) U.S. persons must seek authorization from BIS for the export or reexport to an FTO of any item subject to the EAR.

(3) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an FTO of any item subject to the EAR.

(4) Any export or reexport to an FTO by any person of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(5) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorization for items described by paragraph (a) of this section are available for exports or reexports to FTOs.

(c) Licensing policy

Applications for exports and reexports to FTOs of all items identified by paragraph (a) of this

section will generally be denied, to the extent they constitute material support or resources, as defined in 18 U.S.C. 2339A(b).

(d) Contract sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

(e) FTOs also designated as SDTs or SDGTs

In cases in which an FTO is also an SDT, as described in §744.13, or an SDGT, as described in §744.12, the license requirements and licensing policy set forth in §744.13 or §744.12 will apply.

NOTE to §744.14: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

§744.15 [Reserved]

§744.16

RESTRICTIONS ON EXPORTS AND REEXPORTS BY U.S. PERSONS TO SPECIALLY DESIGNATED PERSONS ON THE LIST OF SPECIALLY DESIGNATED NATIONALS IDENTIFIED BY THE BRACKETED SUFFIX INITIALS [FRYM]

BIS maintains restrictions on exports and reexports of any item subject to the EAR by U.S. persons to persons designated pursuant to Executive Order 13088 of June 9, 1998, as amended by Executive Order 13192 of January 17, 2001 (Executive Order 13088, as amended). These designated persons include individuals listed in the Annex to Executive Order 13192, as

well as persons designated by the Secretary of the Treasury, in consultation with the Secretary of State pursuant to that order (e.g., the former President of the Federal Republic of Yugoslavia, Slobodan Milosevic; his close associates; persons determined to be under open indictment by the International Criminal Tribunal for the former Yugoslavia; and persons determined to have sought, or to be seeking, to maintain or reestablish illegitimate control over the political processes or economic resources of the Federal Republic of Yugoslavia (Serbia and Montenegro)). Persons designated pursuant to Executive Order 13088, as amended, are included on the list of Specially Designated Nationals maintained by the Department of the Treasury's Office of Foreign Assets Control (OFAC) and identified by the bracketed suffix initials [FRYM]. The requirements set forth in this section further the objectives of Executive Order 13088, as amended.

(a) License requirements

(1) A license is required for all exports and reexports of any item subject to the EAR by a U.S. person to a person on the list of Specially Designated Nationals maintained by OFAC and identified by the bracketed initials [FRYM].

(2) A U.S. person may also be required to seek separate authorization from OFAC for an export or reexport to a designated person identified by the bracketed initials [FRYM].

(b) License policy

Applications for exports and reexports of any item subject to the EAR by a U.S. person to a Specially Designated National identified by the bracketed initials [FRYM] will be reviewed with a general policy of denial.

§744.17

**RESTRICTIONS ON CERTAIN EXPORTS
AND REEXPORTS OF GENERAL
PURPOSE MICROPROCESSORS FOR
'MILITARY END-USES' AND TO
'MILITARY END-USERS'**

(a) General prohibition

In addition to the license requirements for anti-terrorism reasons set forth in part 742 of the EAR, you may not export or reexport commodities described in ECCN 3A991.a.1 on the CCL ("microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a "composite theoretical performance" ("CTP") of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more), without a license if, at the time of the export or reexport, you know, have reason to know, or are informed by BIS that the item will be or is intended to be used for a 'military end-use,' as defined in paragraph (d) of this section, in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR); or by a 'military end-user,' as defined in paragraph (e) of this section, in Country Group D:1. This license requirement does not apply to exports or reexports of items for the official use by personnel and agencies of the U.S. Government or agencies of a cooperating government. See §740.11(b)(3) of the EAR for definitions of "agency of the U.S. Government" and "agency of a cooperating government".

***(b) Additional prohibition on exporters or
reexporters informed by BIS***

BIS may inform an exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of items described in ECCN 3A991.a.1 to specified end-users, because BIS has determined that there is an unacceptable risk of diversion to the uses or users described in

paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter or reexporter from compliance with the license requirements of paragraph (a) of this section.

(c) License review standards

There is a presumption of denial for applications to export or reexport items subject to this section.

(d) Military end-use

In this section, the phrase ‘military end-use’ means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the International Munitions List (IML) (as set out on the Wassenaar Arrangement website at <http://www.wassenaar.org>); commodities listed under ECCN’s ending in “A018” on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR; or any item that is designed for the “use”, “development”, “production”, or deployment of military items described on the USML, the IML, or commodities listed under ECCN’s ending in “A018” on the CCL. Supplement No. 1 of this part lists examples of ‘military end-use.’

(e) Military end-user

In this section, the term ‘military end-user’ means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support ‘military end-uses’ as defined in paragraph (d) of this section.

(f) Exceptions

No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

§744.18

**RESTRICTIONS ON EXPORTS,
REEXPORTS AND TRANSFERS TO
PERSONS DESIGNATED IN
OR PURSUANT TO
EXECUTIVE ORDER 13315**

Consistent with Executive Order (E.O.) 13315 of August 28, 2003 (“Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions”), BIS maintains restrictions on exports, reexports, and transfers to persons designated in or pursuant to E.O. 13315. These persons include individuals and entities listed in the Annex to Executive Order 13315, as well as persons subsequently designated pursuant to criteria set forth in the order. OFAC includes the names of persons designated pursuant to E.O. 13315 in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. All persons designated in or pursuant to E.O. 13315 are identified in Appendix A by the bracketed initials [IRAQ2].

(a) License Requirements

(1) A license requirement applies to the export, reexport, or transfer of any item subject to the EAR to –

(i) Persons listed in the Annex to E.O. 13315 of August 28, 2003; or

(ii) Persons determined to be subject to E.O. 13315.

(2) To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person identified in paragraph (a) of this section of any item

subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR but not subject to regulations maintained by OFAC.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(5) Any export, reexport, or transfer to a person identified in paragraph (a) of this section by a U.S. person of any item subject both to the EAR and regulations maintained by OFAC and not authorized by OFAC is a violation of the EAR.

(6) Any export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR that is not subject to regulations maintained by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad, reexport, or transfer by a non-U.S. person to a person

identified in paragraph (a) of this section of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorizations are available for export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(c) Licensing policy

Applications for licenses for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR will generally be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) Contract sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

SUPPLEMENT NO. 1 TO PART 744 - MILITARY END-USE EXAMPLES FOR §744.17

- (a) **Examples of military end-uses (as described in §744.17 (d) of this part) of general-purpose microprocessors classified as ECCN 3A991.a.1 includes employing such microprocessors in the “use”, “development”, “production”, or deployment of :**
- 1) Cruise missiles;
 - 2) Electronic suites of military aircraft and helicopters;
 - 3) Radar for searching, targeting, or tracking systems;
 - 4) Command/control/communications or navigation systems;
 - 5) Unmanned aerial vehicles capable of performing military reconnaissance, surveillance, or combat support;
 - 6) Rocket or missile systems;
 - 7) Electronic or information warfare systems; *or*
 - 8) Intelligence, reconnaissance, or surveillance systems suitable for supporting military operations.
- (b) [RESERVED]

SUPPLEMENT NO. 2 TO PART 744

[RESERVED]

**COUNTRIES NOT SUBJECT TO CERTAIN
NUCLEAR END-USE RESTRICTIONS IN §744.2(a)**

Australia
Austria
Belgium
Canada
Denmark
Finland
France
Germany
Greece
Iceland
Ireland
Italy (includes San Marino and Holy See)
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Turkey
United Kingdom

ENTITY LIST

Supplement No. 4 to part 744 is not formatted for this document. Please see file 744spir.